

MEDICAL PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life        )  
Term Parole Consideration        )  
Hearing of:                        )  
                                      )  
KENNETH HOLCOMB                    )  
\_\_\_\_\_                              )

CDC Number: E-35406

CALIFORNIA STATE PRISON, CORCORAN

CORCORAN, CALIFORNIA

SEPTEMBER 23, 2011

11:15 A.M.

PANEL PRESENT:

TERRI TURNER, Presiding Commissioner  
SHANNON HOGG, Deputy Commissioner

OTHERS PRESENT:

PATRICK SPARKS, Attorney for Inmate  
MELISSA MCKOWAN, Deputy District Attorney  
RICHARD JALLINS, Deputy Commissioner, Observer

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

Colleen Bunker, Transcriber, NCCR

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P R O C E E D I N G S

**PRESIDING COMMISSIONER TURNER:** Okay. Good morning. The time is 11:15. This is a Medical Parole Consideration Hearing for Kenneth Holcomb, H-O-L-C-O-M-B, CDC Number E-35406. Today's date is September 23rd, 2011. We're located at California State Prison at Corcoran. The inmate was received on September 25th, 1992 from San Mateo County. The controlling offense in this case is Murder Second With Use of a Firearm. The non-controlling case is Murder Second, Attempted, With a Firearm. The total term was 15 years with second years, eight months enhancement, for a total term of 22 years and eight months. The life term starts November 7th, 1997. This hearing is being recorded. For purposes of voice identification, each of us will state our first name and last name, spelling our last name. I will start with myself and go to my left. My name is Terri Turner, T-U-R-N-E-R, Presiding Commissioner.

**DEPUTY COMMISSIONER HOGG:** Shannon Hogg, H-O-G-G, Acting Associate Chief Deputy Commissioner, Board of Parole Hearings.

**DEPUTY COMMISSIONER JALLINS:** Richard Jallins, Associate Chief Deputy Commissioner, Board of Parole Hearings, observing today.

1           **ATTORNEY SPARKS:** Patrick Sparks, S-P-A-R-K-S,  
2 attorney for Mr. Holcomb, who is not present due to his  
3 medical condition.

4           **PRESIDING COMMISSIONER TURNER:** Okay. I've had  
5 the opportunity to review the 1073 and the DEC System.  
6 Note that the inmate has the following disabilities.  
7 There is the authorization for release for the medical  
8 condition of the inmate signed by his wife, who is the  
9 authorized representative, so we will be discussing his  
10 medical condition today. In looking at the 1073, there  
11 doesn't -- the normal didn't -- He cannot walk, but he  
12 can see and hear.

13           **ATTORNEY SPARKS:** Yes.

14           **PRESIDING COMMISSIONER TURNER:** And he can talk,  
15 according to you, at least --

16           **ATTORNEY SPARKS:** Yeah, a little.

17           **PRESIDING COMMISSIONER TURNER:** -- somewhat.

18           **ATTORNEY SPARKS:** He talked with struggles. So,  
19 he struggled to talk, but he did.

20           **PRESIDING COMMISSIONER TURNER:** Okay. And so has  
21 his basic ADA rights been met?

22           **ATTORNEY SPARKS:** Yes.

23           **PRESIDING COMMISSIONER TURNER:** Okay. So, we've  
24 had the opportunity to review the medical parole  
25 referral form, 7478-MP, and the all the supporting

1 documents. We'll be discussing that information as it  
2 relates to the findings that we will be making here  
3 today. The inmate has been deemed to meet the medical  
4 eligibility by the CDCR physician, and referred to the  
5 Board under Penal Code section 3550(g) for this hearing.  
6 The purpose of this hearing is to determine whether the  
7 conditions which under this inmate would be released  
8 would not reasonably pose a threat to public safety.  
9 The Panel will not be retrying the inmate's commitment  
10 offense, and instead accepts as true the court's  
11 finding. A determination of medical parole suitability  
12 is not a finding of parole suitability under Penal Code  
13 section 3041, and is not binding on any subsequent Panel  
14 consideration -- I can't even read -- on any subsequent  
15 Panel considering parole suitability or medical parole  
16 suitability. Deputy Commissioner, is there any  
17 confidential information we'll be using today?

18 **DEPUTY COMMISSIONER HOGG:** There's confidential  
19 information in the file that may or may not be used.

20 **PRESIDING COMMISSIONER TURNER:** Okay. Thank you.  
21 Counselor, is there any additional information to be  
22 submitted today?

23 **ATTORNEY SPARKS:** No.

24 **PRESIDING COMMISSIONER TURNER:** In reviewing the  
25 7478 form, which is the medical parole form, this is

1 authored by Jong, it looks like Goon, G-O-O-N, or Moon,  
2 M-O-O-N, who is the primary care physician, and that's  
3 dated April 19th, 2011. As far as diagnosis for  
4 Mr. Holcomb, it says that he's a quadriplegic after  
5 cervical spinal fracture, and the prognosis, he'll be  
6 bedridden all of his life. His mental status, he was  
7 awake and alert. He had normal breathing. He needed  
8 assistance in eating. He needed total care in bathing,  
9 dressing, transforming and elimination. He has minimal  
10 use of his right arm. He can reach his mouth and a  
11 brush. I don't know if that means toothbrush. And says  
12 he cannot ambulate. And again, there is a medical  
13 release from his wife, who is the designated person to  
14 authorize that. The facts of the commitment offense as  
15 taken from the probation officer's report on page 7 is  
16 as following: On January 13th, 1992 at approximately  
17 two a.m., the police officers responded to a Denny's  
18 Restaurant parking lot on a report of a man down. The  
19 victim was found shot in the chest. He was transported  
20 to a nearby hospital for treatment. He died less than  
21 ten minutes later. An autopsy was performed, and the  
22 cause of death was a gunshot wound to the chest, which  
23 went through the heart and liver. Police investigation  
24 revealed that the defendant and the homeless victim, a  
25 Randall Challis, C-H-A-L-L-I-S, initially met inside

1 Denny's Restaurant. A witness says their conversation  
2 appeared normal. Mr. Challis followed Mr. Holcomb out  
3 to his vehicle. Witnesses say that it appeared that  
4 Mr. Challis was leaning onto the car when Mr. Holcomb  
5 shot him once. The victim fell to the ground and the  
6 defendant's girlfriend sped away from the scene. Police  
7 investigation led to Mr. Holcomb's arrest. He was  
8 booked at the county jail for murder on the same day at  
9 11:30 p.m. As it relates to Mr. Holcomb's statement,  
10 I'm going to take that from page 2 of the probation  
11 report, and it says: And regarding the present offense,  
12 apparently the defendant and the victim met in the  
13 restaurant only minutes before the victim followed him  
14 out to his vehicle, where he was shot one time in the  
15 chest. The victim died minutes later. Mr. Holcomb  
16 denied his involvement in the crime to police. He did  
17 not testify during the jury trial, and made no statement  
18 to the probation officer. There has never been a motive  
19 established for his behavior. There's a victim's impact  
20 statement where the family was devastated behind the  
21 brother's death, and they were hoping to find out why  
22 the senseless act had occurred. Unfortunately, the  
23 probation officer was unable to provide her with that  
24 information. Apparently the victim had an ex-wife that  
25 lived in New York and a sister in New Jersey. I will

1 incorporate by reference the prior criminality as  
2 referenced by the CI&I rap sheet that's reviewed in the  
3 C-File. Mr. Holcomb's criminal history started in 1980.  
4 He was sentenced to the youth authority on a burglary  
5 second charge. He had an additional arrest in 1982 for  
6 throwing a substance at a vehicle, possession of a  
7 firearm, and a possession of a concealed firearm and  
8 live ammunition. Also on the burglary warrant. In 1983  
9 in San Mateo County he was convicted for burglary. Was  
10 sentenced to two years probation, one year county jail.  
11 In 1984, he was arrested by Redwood City for kidnapping  
12 and there was a warrant for a rape in concert with force  
13 and violence. In 1984 in San Mateo, the rape in concert  
14 with force and violence was dismissed. The unlawful  
15 sexual intercourse with a minor he was convicted of,  
16 given three years probation, a hundred days jail. 1984,  
17 he got a probation violation, committed a burglary, was  
18 sentenced to two years of state prison. In 1985, he was  
19 arrested in San Francisco for an assault with a deadly  
20 weapon, not a firearm, that caused great bodily injury.  
21 There's no disposition on that. That was a DA reject.  
22 The victim was unavailable or declined to prosecute. In  
23 1985, there was a 211 P.C. robbery arrest. That was  
24 dismissed. 1986, he got arrested for a parole  
25 violation. 1987, felon in possession with a firearm.



1 1989, possession of cocaine base for sale.  
2 Transportation, sale of narcotics and controlled  
3 substance. Possession of a controlled substance  
4 paraphernalia. That was a DA reject. In 1989 in court,  
5 for possession of cocaine base for sale. Subject was  
6 sentenced to four years prison and was given a fine, and  
7 that was run concurrent with a previous sentence. And  
8 then 1992 is when the life crime took place. Deputy  
9 Commissioner, do you want to cover the post-conviction  
10 factors since his arrival to CDCR?

11 **DEPUTY COMMISSIONER HOGG:** Okay. One of the  
12 things I just realized is that we didn't give the Deputy  
13 DA on the phone an opportunity to make herself  
14 identified.

15 **PRESIDING COMMISSIONER TURNER:** I'm sorry.  
16 Deputy DA, can you introduce yourself for the record,  
17 please?

18 **DEPUTY DISTRICT ATTORNEY MCKOWAN:** Yes. Melissa  
19 McKowan, M-C-K-O-W-A-N, Deputy District Attorney from  
20 San Mateo County.

21 **PRESIDING COMMISSIONER TURNER:** Thank you.

22 **DEPUTY DISTRICT ATTORNEY MCKOWAN:** Thank you.

23 **DEPUTY COMMISSIONER HOGG:** Since Mr. Holcomb was  
24 received into CDCR custody, he's had a total of 11 115s,  
25 the first being March 8th, 1994 for a work performance.

1 The second being October 28, 1995, out of bounds.  
2 July 3rd, 1996, failure to report to work. October  
3 27th, 1997, failure to report to work. May 5th, 1998,  
4 failure to report to work. July 27th, 1998, failure to  
5 report to work. April 12th, 2000, mutual combat.  
6 February 8th, 2001, disrespect to staff. March 18th,  
7 2001, battery on peace officer. March 28th, 2001,  
8 disruptive behavior. June 11th, 2002, disrespect for  
9 staff. He's also had a total of eight 128s, the first  
10 beginning October 27th, 1995, the last being August  
11 29th, 1998. He has a total of four education chronos in  
12 the file. Only one is satisfactory. The other three  
13 all list him as unsatisfactory. There's a total of five  
14 work supervisor reports in the file ranging from  
15 unsatisfactory to exceptional (inaudible).

16 **PRESIDING COMMISSIONER TURNER:** Okay. In looking  
17 at the parole plans that were approved by the Department  
18 of Corrections Parole and Community Services, DAPO, the  
19 placement has been approved for the Crestwood Idylwood  
20 Facility. That's located in Sunnyvale, California. The  
21 contact person is a Judy Nelson, who is the Director of  
22 Clinical Services. And that placement plan was approved  
23 by a T. Martin, Parole Agent II out of the San Jose 6  
24 Parole Unit. Apparently, this is a locked facility.  
25 Did not receive any support or opposition letters. We

1 do have the District Attorney on the phone in San Mateo  
2 County, and she will speak at the appropriate time. Do  
3 you have any questions at this point for the inmate's  
4 attorney?

5 **DEPUTY COMMISSIONER HOGG:** No, I do not.

6 **PRESIDING COMMISSIONER TURNER:** Okay. Is there  
7 any additional information in relationship to your  
8 client's condition you would like to --

9 **ATTORNEY SPARKS:** Put on the record?

10 **PRESIDING COMMISSIONER TURNER:** -- put on record?

11 **ATTORNEY SPARKS:** Or comment?

12 **PRESIDING COMMISSIONER TURNER:** Or comment.

13 **ATTORNEY SPARKS:** Thank you. In the report by  
14 the -- Well, maybe the DA should go first. I'll reserve  
15 my comments for closing.

16 **PRESIDING COMMISSIONER TURNER:** Okay. So, no  
17 questions at this point?

18 **ATTORNEY SPARKS:** No.

19 **PRESIDING COMMISSIONER TURNER:** Okay. District  
20 Attorney, do you have any questions?

21 **DEPUTY DISTRICT ATTORNEY MCKOWAN:** Yes, I do have  
22 some questions. The medical information that I was  
23 given is just that one form, and there isn't sufficient  
24 information in my opinion regarding the actual physical  
25 circumstances of his quadriplegia. Having extensive

1 experience with that particular condition, we don't know  
2 if he, for instance, has intravenous drugs or a feeding  
3 tube. We don't know if he has an external or internal  
4 colostomy bag. I'm just wondering what the actual  
5 extent of his quadriplegia is. I understand that he is  
6 bedridden. I do know that one point he was able to be  
7 transferred into a wheelchair. Is that no longer the  
8 case? He cannot ever be transferred into a wheelchair?

9       **ATTORNEY SPARKS:** I went out and interviewed him,  
10 or to the best of my ability, and witnessed his  
11 circumstances. I'm Patrick Sparks, the attorney for  
12 him. I can answer a little of that, but I'm not  
13 qualified to answer all of it. He didn't have a feeding  
14 tube. He, as the report indicates, had some movement of  
15 his right arm. He was able to change the remote TV  
16 station. He wasn't able to use his fingers in that  
17 regards. He was just able to use like his hand almost  
18 like as a paw, if you will, and it was extremely limited  
19 movement with some degree of effort. As to being placed  
20 in a wheelchair, he wasn't at that time. He was in a  
21 gurney bed and he wasn't sitting up, and it didn't seem  
22 as if he was eager to sit up or had any desire to sit  
23 up. So, I imagine they might be able to put him in a  
24 wheelchair, but he wouldn't be able to assist in any way  
25 to get --

1           **DEPUTY DISTRICT ATTORNEY MCKOWAN:** I'm just

2 wondering what the -- When he went from being wheelchair  
3 bound to being bed bound and whether or not he actually  
4 is still able to be transferred into a power chair and  
5 then to be able to be mobile in that capacity, because  
6 he was obviously at some point. It looks like in 2007  
7 and again even in 2010 there was some indication that he  
8 was mobile once he was transferred into a power chair.

9           **PRESIDING COMMISSIONER TURNER:** Well, there's

10 documentation in the Central File. There's a Form CDC  
11 7410, and this is dated October 26th, 2010 and then, I  
12 guess, updated November 6th of 2010. But at that point  
13 apparently he was totally disabled but he was able to be  
14 in an electric wheelchair. It says: "Totally disabled,  
15 no movement on arm and leg." And there's another form  
16 dated February of this year where he's basically  
17 bedridden. So, sometime between October of 2010 and  
18 February of 2011, it appears that maybe he's no longer  
19 in a wheelchair and is bedridden.

20           **DEPUTY DISTRICT ATTORNEY MCKOWAN:** Because our

21 concern, obviously, is that, you know, if he was still  
22 able to be in a power chair and has the ability to move  
23 his hands, then he would be able to move -- or not his  
24 fingers, obviously, but if he could still move his arm  
25 he still would be in a position to be able to, you know,

1 for instance, inflict harm on someone else and continue  
2 to pose a danger to anyone who might be around him based  
3 on the fact that he specifically had engaged in that  
4 conduct before in 2001, having injured a -- or assaulted  
5 a correctional officer with his wheelchair. And the  
6 People's position at this point is still that if he has  
7 any capacity for movement whatsoever, he maintains some  
8 degree of risk of harm to others based on the fact that  
9 his motivation for any of his crimes in the past has  
10 never been able to be determined. And, in fact, there  
11 are indications in his psychiatric history that, in  
12 fact, he simply injured people or committed acts or  
13 violence for fun or for entertainment. So, we would  
14 continue to suggest that he poses a danger as long as he  
15 is capable of any movement whatsoever.

16 **PRESIDING COMMISSIONER TURNER:** Okay. And is  
17 that your closing statement then, or do you want to make  
18 a closing in addition to that?

19 **DEPUTY DISTRICT ATTORNEY MCKOWAN:** That would be  
20 fine.

21 **PRESIDING COMMISSIONER TURNER:** Okay. Thank you.  
22 Counsel, do you want to make a closing?

23 **ATTORNEY SPARKS:** Well, I would have to agree  
24 with the DA if he had movement that would qualify for  
25 what she's describing as a power chair movement

1 capability; however, that didn't seem to be the case,  
2 and that's why he has coming before on the 7385-MP in  
3 conjunction with the signing off of that by the 7478  
4 CDCR Form. The Board can, you know, have him  
5 reassessed. Should, as a special condition of parole,  
6 should he become able to get back into a power chair,  
7 then basically bring him back into prison if they make  
8 the finding, I would suggest, as exactly as the DA has  
9 represented here today. Because it's clear to me that  
10 -- Well, the important part here is that he's in a  
11 locked facility. Even though he can still talk, the  
12 fact that it's locked, it appears that they're going to  
13 allow for people that work there and not people that  
14 could come in and speak with him and maybe follow out  
15 whatever orders he might have. Not to say that he's the  
16 Godfather or anything, but he's a pretty dangerous guy.  
17 I'd have to concur with the nature of who he is. I  
18 think that's pretty well laid out in the probation  
19 officer's report. Particularly, one of the detectives  
20 believed that he was cold-hearted and did not appear to  
21 care about the consequences of his behavior. So, as far  
22 as him having like the capacity in his mind for  
23 dangerousness, I think it's there, but the situation  
24 isn't that. It's more whether or not he can act out his  
25 dangerousness in any way. So long as when he's speaking

1 to people they know that what he says, they should not  
2 be following any of his criminal conduct, meaning  
3 joining in. I would (inaudible) that that would be a  
4 special condition of parole too. That, you know, people  
5 who are in association with him, I think he should be  
6 medically released, but I think there should definitely  
7 be a check on, hey, if he's ever able to get into his  
8 wheelchair and power up again and be mobile, that maybe  
9 he should be returned to custody probably. And then  
10 second, if he -- Anybody who reads his chart should look  
11 at him and understand that anything he says should be  
12 mixed with messages of, go do this violent act or  
13 something, and that they should be warned ahead of time  
14 so that they don't take any action that he's advocating.  
15 I'll submit it with that.

16 **PRESIDING COMMISSIONER TURNER:** Okay. Thank you.  
17 At this point, we are going to go off record and go into  
18 deliberation. The time is now 11:40.

19 **R E C E S S**

20 **--oOo--**



## 1 CALIFORNIA BOARD OF PAROLE HEARINGS

## 2 D E C I S I O N

3 DEPUTY COMMISSIONER HOGG: Is everyone ready?

4 We're back on record.

5 PRESIDING COMMISSIONER TURNER: Okay. We are  
6 back on the record. It is now 12:20, and all the  
7 parties that were present previously have returned. The  
8 Panel finds that the conditions under which the inmate  
9 would be released will not pose a reasonable threat to  
10 public safety. The determination of medical parole is  
11 not a finding of parole suitability under Penal Code  
12 section 3041. It is not binding on any other subsequent  
13 Panel considering parole suitability. If the inmate  
14 remains on medical parole when he or she reaches his  
15 minimum eligible parole date, if he has already reached  
16 that date he will be eligible for parole consideration  
17 under Penal Code sections applicable to individuals  
18 sentenced to indeterminate sentence. However, until he  
19 is found suitable for parole under those statutes, he  
20 will remain on medical parole for as long as he  
21 continues to be eligible. Penal Code section  
22 3550(h)(2). The Panel imposes the following special  
23 conditions. The inmate will submit to an examination by  
24 a physician selected by the Board for purposes of

25 KENNETH HOLCOMB E-35406 DECISION PAGE 1 9/23/11

1 diagnosing the parolee's current medical condition. So,  
2 at this point we're granting the medical parole. It is  
3 now 12:22, and this concludes the hearing.

4                   A D J O U R N M E N T

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21 MEDICAL PAROLE GRANTED

22 THIS DECISION WILL BE FINAL ON: January 21, 2012

23 YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT

24 DATE, THE DECISION IS MODIFIED

25 KENNETH HOLCOMB      E-35406      DECISION PAGE 2      9/23/11

**CERTIFICATE AND  
DECLARATION OF TRANSCRIBER**

I, COLLEEN BUNKER, as the Official Transcriber,  
hereby certify that the attached proceedings:

In the matter of the Life	)	CDC Number: E-35406
Term Parole Consideration	)	
Hearing of:	)	
	)	
KENNETH HOLCOMB	)	
_____	)	

CALIFORNIA STATE PRISON, CORCORAN

CORCORAN, CALIFORNIA

SEPTEMBER 23, 2011

11:15 A.M.

were held as herein appears. Further, this transcript  
is a true, complete, and accurate record, to the best of  
my ability, of the recorded material provided for  
transcription.



=====

Colleen Bunker  
October 9, 2011  
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